



State of Tennessee Department of Children's Services

Administrative Policies and Procedures: 25.3-DOE

Subject: Uniform Disciplinary and Appeal Process For Youth In Youth Development Centers

Supersedes: DYD 14.3

Approved by:

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Authority:

TCA 37-5-106

ACA Standard:

2-9293, 2-9303,
2-9311

- I. APPLICATION: To all staff and youth at Youth Development Centers.
- II. POLICY: All youth housed in a Youth Development Center who are alleged to have committed a major violation will receive a fair and impartial process to hear and evaluate evidence and determine the appropriate disciplinary action, if the allegations are substantiated.
- III. PROCEDURES:
 - A. The Superintendent shall designate at least one Hearing Officer to hear cases, evaluate evidence and determine appropriate disciplinary action. The Hearing Officer shall be knowledgeable of departmental and local policies and procedures as well as the operation of the facility.
 - B. The Hearing Officer(s) shall report directly to the Superintendent or designee in matters relating to the disciplinary process.
 - C. The Hearing Office shall receive the Disciplinary Report/Notice of Hearing (Form CS-0055) that alleges a major infraction has occurred. Upon receipt of this notification, the Hearing Officer shall:
 - 1. Ensure that the youth understands the nature of the Disciplinary Report;
 - 2. Ensure that an investigation of major violations has begun within 24 hours of the time the violation is reported;
 - 3. Ensure the youth is aware of his/her rights and possible sanctions for the offense;

4. Hold a hearing within seven (7) days, excluding weekends and holidays, of the alleged incident for any major violation. At this hearing, the youth may enter a plea or waive a hearing of the facts before the Hearing Officer and proceed to the second level by appearance before the Discipline Committee.

D. The Discipline Committee shall:

1. Conduct a fact finding hearing when first level hearing is waived by the youth. This hearing will be held within three (3) days, excluding weekends and holidays, from date of waiver;
2. Conduct an appeal review upon youth request. This review will be held and a decision rendered within five (5) days, excluding weekends and holidays, from date of waiver.

E. Conduct of Hearing:

1. The youth may appear at the hearing and participate in the hearing, unless he/she waives that right in writing or when his/her behavior during the hearing justifies exclusion. Reason(s) for a youth's exclusion from a hearing shall be documented;
2. The youth may be represented by an advocate of his/her choice during the hearing. When a youth does not select an advocate, one will be appointed when it is apparent that the youth is not capable of effectively collecting and presenting evidence on his/her own behalf;
3. The youth and the advocate may call witnesses and may present any testimony or documentary information relative to the allegation.
4. The reporting staff member shall be present at all contested hearings and may call witnesses and present any testimony or documentary information relative to the allegations. The reporting staff member shall present all factual information in a non-adversarial manner;
5. The youth, advocate, and reporting staff member shall have the opportunity to question witnesses when statements or testimony are presented at the hearing, except when doing so may severely jeopardize the life or safety of persons or the security or order of the facility. In a case where the Hearing Officer/Discipline Committee limits this opportunity, the Hearing Officer/Discipline Committee will acknowledge this in writing, giving written reason(s) for the limitation. This documentation shall be included in the dispositional information of the hearing;
6. The youth is not required to show that the allegations are untrue, rather, the Hearing Officer/Discipline Committee must determine, based on the information presented, that the allegations are true by the greater weight of the evidence and that, based upon this finding, the program sanction is warranted.

7. If the allegation is found to be true, the Hearing Officer/Discipline Committee shall designate a program sanction as prescribed in Disciplinary Punishment Guidelines policy.
 8. The Hearing officer/Discipline Committee shall prepare a written hearing report which shall include the findings, the evidence relied on, the reason(s) for the decision and the disciplinary action to be taken, if warranted.
 9. The Hearing Officer/Discipline Committee shall provide the youth with a copy of the written findings, Form CS-0211 and ensure that the youth and advocate are informed of the right and manner in which to perfect an appeal and provided with an appeal form (Form CS-0210).
- F. Following the hearing and written notice of the findings (Form CS-0211) the sanction for a guilty finding will be imposed as soon as is practical. Imposition of the sanction will be stayed upon receipt of a written appeal, until resolution of the appeal.
- G. The youth may appeal the decision of the Hearing Officer to the Discipline Committee and decision of the Discipline Committee to the Superintendent. Such appeal should be within 24 hours but cannot exceed fifteen (15) days of receipt of the written findings, if the youth feels that:
1. New information which was not presented at the hearing becomes available and warrants reconsideration of the matter;
 2. The sanction is too severe in relation to the offense and the information presented at the hearing;
 3. The hearing proceedings did not comply with policies and procedures applicable to disciplinary hearings;
 4. The information presented to the Hearing Officer/Discipline Committee was not sufficient to justify the conclusion that the allegations were true.
- H. The Discipline Committee/Superintendent shall, within five (5) days, excluding weekends and holidays, review the written findings, the youth's appeal and render a decision. The decision of the superintendent shall be final. The decision may include:
1. Refer the appeal back to the Hearing Officer/Discipline Committee based on new evidence presented by the youth;
 2. Reaffirm the written findings and the disciplinary action;
 3. Reaffirm the written findings but deny the disciplinary action recommended; issue alternate disciplinary action which, in no case, would exceed the sanction issued by the Hearing Officer/Discipline Committee;
 4. Deny the written findings and the disciplinary action recommended; conduct a new investigation and render a new written decision;

5. Dismiss the disciplinary action.
- I. A youth who is dissatisfied with the decision of the Superintendent on his/her appeal may file an appeal directly to the Assistant Commissioner of Residential Services within five days excluding weekends and holidays on the following grounds:
 1. That proper disciplinary procedures were not followed;
 2. That the sanction imposed exceeded the limits outlined in Disciplinary Punishment Guidelines policy;
 3. The sanction imposed exceeds a three week loss of earned time in program and was so excessive in light of the circumstances that it constituted an abuse of discretion.
- J. Imposition of sanctions are not stayed pending the resolution of the appeal to the Assistant Commissioner of Residential Services unless the Superintendent agrees to do such. The Assistant Commissioner or designee will provide the youth a written response within five days excluding weekends and holidays after receiving the appeal. The decision of the Assistant Commissioner is final.
- K. Expedited Appeal:
 1. The expedited appeal process shall be used when the youth's release date is within two (2) weeks and the sanction will result in an extension of his/her release date.
 2. Every reasonable effort shall be made to complete the appellate process on or before the date on which the youth is scheduled to be released, but in no case shall the time frame for the appellate process exceed three (3) days, excluding weekends and holidays.
- L. Finding or Sanction Changed on Appeal:
 1. In the event the written findings are dismissed, the following shall occur:
 - a) The Superintendent or designee shall ensure that the youth is no longer subject to any sanction imposed for the incident;
 - b) The advocate shall ensure that no record of the incident or the proceedings is placed or allowed to remain in the youth's file. However, if confinement was utilized, a record of that action must be retained in the file, accompanied by a memorandum explaining the reason(s), why confinement was employed and the duration of the confinement.
 2. In the event the sanction imposed is reduced, the Hearing Officer shall ensure that the youth is subject only to the part of the sanction remaining, if any.
- M. A log of all disciplinary hearings and dispositions shall be maintained. The superintendent shall be responsible for review of the log and periodic review of

the disciplinary process. Documentation of the Superintendent's review shall be maintained.

IV. FORMS: CS-0055

CS-0211

CS-0210

**(Note: This Policy Cannot Be Revised Without Prior Permission
of Chancery Court, Davidson County, Nashville, Tennessee.)**